

APR 28 1989

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA

WARREN L. TADLOCK, CLERK

BY:                      DEPUTY

IN RE: )  
 )  
MERRILL K. HENSLEY and )  
KATHERINE P. HENSLEY, f/d/b/a )  
Pine Hill Dairy Farm, )  
 )  
Debtors. )

Case No. A-B-85-00082  
Chapter 11

JUDGMENT ENTERED ON 4-28-89

ORDER AWARDING ATTORNEY'S FEES TO DEBTORS' ATTORNEY

This matter is before the court on the debtors' attorney's Application for Interim Attorney's Fees and Expenses, and the objections of the Farmers Home Administration ("FmHA") and South Atlantic Production Credit Association ("SAPCA"). The court has concluded that an award of interim fees and expenses totalling \$7,101.01 is reasonable and appropriate.

Pursuant to 11 U.S.C. § 330(a), the court may award the debtors' attorney "(1) reasonable compensation for actual, necessary expenses rendered...based upon the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services...; and (2) reimbursement for actual, necessary expenses." Pursuant to § 331, such compensation may be awarded on an interim basis.

Notwithstanding the standards contained in § 330(a), the Fourth Circuit has held that it is appropriate in a bankruptcy case to consider the factors and analyses developed by the courts in applying other, more generally stated, statutory fee provisions. Harman v. Levin, 772 F.2d 1150, 1152 (4th Cir. 1985).

The court has considered the decisions of the Supreme Court and the Fourth Circuit Court of Appeals which establish the standards for awarding "reasonable compensation" to attorneys: Hensley v. Eckerhart, 461 U.S. 424 (1983); Blum v. Stenson, 465 U.S. 886 (1984); Pennsylvania v. Delaware Valley Cit. Council, \_\_\_ U.S. \_\_\_, 107 S.Ct. 3078 (1987); Lilly v. Harris-Teeter Supermarket, 842 F.2d 1496, 1510 (4th Cir. 1988); Daly v. Hill, 790 F.2d 1071 (4th Cir. 1986); and Barber v. Kimbrell's Inc., 577 F.2d 216, cert. denied, 439 U.S. 934 (1978), which adopted the standards of Johnson v. Ga. Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974).

The starting point for an objective initial calculation of a reasonable fee is the product of the reasonable hours expended and the reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. at 433.

#### Reasonable Hours

The reasonable hours are determined by considering such factors as: the skill and experience of the attorney; how the case was staffed (or over-staffed); the existence of excessive, redundant or unnecessary hours; the results obtained; the time and labor required by the case; and the novelty and difficulty of the issues involved. See Hensley v. Eckerhart, 461 U.S. at 434-37; and Johnson v. Ga. Highway Express, 488 F.2d at 717-19. In this case, debtors' attorney has submitted a detailed statement describing his work and the time spent on each item. No one has objected to any of the specific items included and, upon the court's own review of the application, it finds that the work

that was done was necessary for the case and that there was no overstaffing, redundant, unnecessary or excessive time put into the case. The case did not present novel or difficult issues, but it did involve changing circumstances and aggressive secured creditors. The court is quite familiar with debtors' counsel and finds him to be a fully competent bankruptcy practitioner, specially certified by the North Carolina State Bar, with over fifteen years experience in this area of practice. He has handled the case efficiently and the hours for which he is seeking compensation are reasonable. The application seeks compensation for 63.40 hours for debtors' counsel and .50 hours for an associate for work done from March 1987 through February 1989. Considering all the appropriate factors, those are reasonable hours for a case of this nature. [The court has considered the "results obtained" factor in reaching this conclusion, but discusses it separately below].

#### Reasonable Fee

The " 'reasonable fee' is to be calculated according to the prevailing market rates in the relevant community." Blum v. Stenson, 465 U.S. at 895. The Supreme Court there recognized that determining the "market rate" for the services of a lawyer is inherently difficult; and it suggested that that was at least partly a function of the type of services rendered and the lawyer's experience, skill and reputation. Id. at 895-96 n. 11. Other factors which bear on determining a reasonable hourly rate are: the skill requisite to properly perform the legal service;

the preclusion or other employment by the attorney due to acceptance of the case; the customary fee; the contingent nature of the fee; the amount involved and the results obtained; the experience, reputation, and ability of the attorney; the undesirability of the case; the nature and length of the professional relationship with the client; and awards in similar cases. Johnson v. Ga. Highway Express, 448 F.2d at 717-19.

Here the rates sought are \$110 per hour for debtors' attorney and \$80 per hour for his associate. The court is familiar with debtors' attorney (as noted above) and with his associate and with the "market" rates for similar services in the Asheville area -- all from dealing with them on a regular day-to-day basis. From that personal experience, the court finds the rates sought in the Application to be reasonable. While the rates sought are current prevailing rates, there has been little inflation in those rates in the two years covered in the Application (certainly no more than would be accounted for by the loss of use of funds over that period of time). Consequently, use of the current rates here is an appropriate method of compensating for delayed payment. See Daly v. Hill, 790 F.2d at 1080-81.

#### Results Obtained

FmHA and SAPCA have objected to the fees sought as being excessive in light of the status of the case at this point and the absence of a confirmed plan of reorganization. In essence, their objection relates to the "results obtained" factor emphasized in Hensley v. Eckerhart, 461 U.S. at 434, 436, 437, and Lilly v. Harris-Teeter Supermarket, 842 F.2d at 1511.

This is a Chapter 11 reorganization filed by individual debtors (husband and wife) who had operated a dairy farm prior to bankruptcy. The debtors filed their petition in February 1985 and have not been successful in obtaining confirmation of a plan of reorganization since that time. While that appears on its face to be a long time to attempt to reorganize, it is not unduly long in the circumstances of this case. While in the process of developing a plan of reorganization, the debtors lost a large tract of land in Surry County to foreclosure. That changed their situation and caused reorganization efforts to take a different tack. In order to attempt to hold on to their remaining land, the debtors attempted vegetable farming. They filed a Second Amended Plan of Reorganization in March 1988. The vegetable farming operation was not successful. Consequently, the debtors are now in a "de facto liquidation." But, they have recently contracted to sell their land at what, if consummated, would appear to be a favorable sale which would provide a dividend for the creditors.

There is, no doubt, some delay here by the debtors and their attorney. In fact, the court itself has been a participant in holding the creditors at bay in an effort to permit the debtors to find a way to save their land. But, the court cannot find that the results in the case up to this point are such that would merit a reduction in the debtors' attorney's compensation. But, the court also finds no reason for any enhancement of the reasonable fee.

The Reasonable Fee

After considering all of the foregoing, the court has concluded that the debtors' attorney should be compensated as sought in his Application:

	<u>Reasonable Hours</u>	<u>Reasonable Rate</u>	<u>Reasonable Fees &amp; Expenses</u>
Pitts	63.40	\$ 110	\$ 6,974.00
Master	.50	80	40.00
Expenses			<u>87.01</u>
		<b>TOTAL</b>	<u><b>\$ 7,101.01</b></u>

It is therefore ORDERED that the debtors' attorney is awarded interim compensation for fees and expenses pursuant to 11 U.S.C. §§ 330 and 331 of \$7,101.01.

This 28th day of April, 1989.

  
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George R. Hodges  
United States Bankruptcy Judge